UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FACUNDO SUAREZ GUERRERO,
Petitioner,

v.

KRISTI NOEM,
Secretary of Homeland Security, et al.,
Respondents.

Civil No. 4:25-cv-5351

PETITIONER'S APPLICATION FOR TEMPORARY RESTRAINING ORDER AND REQUEST FOR HEARING

TO THE HONORABLE DISTRICT JUDGE:

Petitioner FACUNDO SUAREZ GUERRERO ("Mr. Suarez") respectfully moves this Court for the prompt scheduling of a hearing on his Application for a Temporary Restraining Order ("TRO") and Preliminary Injunction (the "Application"), contained in his Original Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, and filed last week, November 7, 2025. *See* ECF No. 1.

In accordance with the instructions provided by the United States District Clerk's Office, and pursuant to Federal Rule of Civil Procedure 65(b)(3) and Local Civil Rule CV-65, Mr. Suarez requests that the Court set the Application for oral argument at the earliest practicable time—ideally within forty-eight (48) hours—given the nature of the issues presented and the illegality of ICE's detention of Mr. Suarez at the Houston Contract Detention Facility amidst his ongoing removal proceedings before the Houston (Greens Road) Immigration Court.

Immediate judicial consideration is necessary because Mr. Suarez faces ongoing, irreparable harm: he is presently in civil immigration custody, with a last known location of

detention at the Houston Contract Detention Facility, due to the fact that the Board of Immigration Appeals has adopted a policy of unlawfully restraining immigration judges from exercising jurisdiction over most immigration bond requests contrary to the plain language of the relevant statute, *i.e.*, 8 U.S.C. § 1226(a). Mr. Suarez also fears being transferred outside this District once Respondents realize Mr. Suarez has sought habeas relief, as Respondents have done precisely that in similar cases in the last several weeks in this and other districts. *See, e.g.*, Ex. A, Notice, *Vera Vergara v. Noem*, No. 3:25-cv-02075-E-BT, ECF No. 9 (N.D. Tex. Aug. 21, 2025) (acknowledging Respondents' transfer of noncitizen in apparent violation of court's directive).

Absent prompt intervention by this Court, Mr. Suarez reasonably fears he could be unlawfully forced to depart the United States—or placed beyond this Court's reach—before meaningful judicial review can occur, despite the fact that Mr. Suarez's continued detention in Respondents' custody is solely as a result of the government's unlawful refusal to permit Mr. Suarez to request an immigration bond hearing while his removal proceedings remain pending—an action that is also unconstitutional, as a violation of procedural due process.

Under Fed. R. Civ. P. 65(b)(3), the Court must set a hearing on a request for injunctive relief "at the earliest possible time," and the Supreme Court has emphasized that a TRO is a short-term measure designed only to preserve the status quo until a full hearing can be held. *See Granny Goose Foods, Inc. v. Bhd. of Teamsters*, 415 U.S. 423, 439 (1974). Consistent with that mandate, courts in this Circuit set such matters swiftly where irreparable harm is imminent in order to "preserve the district court's power to render a meaningful decision after a trial on the merits." *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 572-73 (5th Cir. 1974).

Counsel for Mr. Suarez has attempted to confer via email with Mr. Shawn Ren, Assistant U.S. Attorney for the Southern District of Texas, who represents federal governmental respondents

in habeas petitions, as well as the duty attorney for the Department of Homeland Security, in order to notify Respondents that Petitioner seeks preliminary injunctive relief through a TRO. As of the filing of this motion, government counsel has not indicated whether the government opposes the request for an expedited hearing. Given the exigent circumstances, Mr. Suarez respectfully requests that the Court waive any further conference requirement.

Mr. Suarez is prepared to present argument and evidence by in-person appearance or, if the Court prefers, by videoconference. Should the Court require live testimony, Petitioner requests to be produced at the hearing.

APPLICATION FOR TEMPORARY RESTRAINING ORDER

Petitioner respectfully requests that this Court issue a preliminary injunction directing Respondents to provide him with an immediate individualized custody redetermination hearing under INA § 236(a) within seven (7) days, or, in the alternative, to release him under reasonable conditions of supervision. Petitioner hereby seeks a Temporary Restraining Order, and upon a final hearing, Petitioner asks for permanent injunctive relief as appropriate.

The Supreme Court has made clear that such extraordinary relief depends on a four-factor test: likelihood of success on the merits, irreparable harm, the balance of equities, and the public interest. *Nken v. Holder*, 556 U.S. 418, 434–35 (2009). As explained below, Petitioner satisfies each of these factors.

A. Mr. Suarez Is Likely to Succeed on the Merits of His Petition.

Mr. Suarez has a strong likelihood of success on the merits of his claims. As explained more fully in Mr. Suarez's original habeas petition, numerous district courts—including several courts from within the Fifth Circuit—have already determined that noncitizens in circumstances substantially similar to that of Mr. Suarez, who are detained under Section 236(a), are entitled to

individualized bond hearings before an immigration judge. *See* App'x A, Recent Federal Habeas Decisions; *see* App'x B, Recent TRO Issued in Similar Habeas Case.

Current BIA policy prohibiting immigration judges from exercising jurisdiction over any immigration bond request that Mr. Suarez might file—due to the Board of Immigration Appeals' recent decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)—cannot override the clear and unambiguous language of Section 236(a). Mr. Suarez also raises a constitutional claim under the Fifth Amendment, as prolonged detention without any opportunity for individualized custody review violates due process.

Taken together, these statutory and constitutional grounds present not merely a plausible claim, but a compelling one. Under *Nken v. Holder*, 556 U.S. 418, 434 (2009), likelihood of success is the most critical factor in evaluating interim relief. Here, Petitioner's claim is exceptionally strong.

B. Mr. Suarez Will Suffer Irreparable Harm If a TRO Does Not Issue.

If this Court does not grant immediate relief, Mr. Suarez will continue to suffer irreparable harm. The Supreme Court has recognized that "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Constitution. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Every day Mr. Suarez remains confined without access to the procedures guaranteed by law constitutes a grave and irreversible injury.

Even if Mr. Suarez were eventually granted a bond hearing after protracted litigation, the harm inflicted by the period of unlawful detention—loss of liberty, disruption of family life, psychological strain, economic hardship, and reputational damage—could never be undone. Worse yet, his continued detention beyond November 24 means that he will be unable to attend

his USCIS interview for his adjustment of status application (colloquially known as a "green card" application), which will be deemed "abandoned" and thus denied, resulting in the loss of thousands of dollars of filing fees, and the frustration of a process that has literally taken years, starting with his father's filing of a family petition for him in 2001. As *Nken* instructs, irreparable harm cannot be speculative; it must be actual and concrete. 556 U.S. at 435. Mr. Suarez's ongoing detention without a lawful hearing meets that standard.

C. Balance of Equities Weighs in Mr. Suarez's Favor.

The balance of equities tips decisively in Petitioner's favor. On his side lies the interest in safeguarding one of the most fundamental rights recognized in our legal system—the right to not be arbitrarily detained without process. On the government's side, the only asserted interest is administrative convenience in applying the BIA's recent, and in this Circuit nonbinding, precedents.

There is no evidence that Petitioner poses a danger to the community or a risk of flight. In contrast, every additional day of unlawful confinement inflicts significant harm on Petitioner. When weighed against each other, the equities clearly support granting immediate relief.

Additionally, the undersigned Counsel for Petitioner has undertaken to contact Counsel for the Department of Homeland Security by emailing the duty attorney for the Houston Office of ICE – Enforcement and Removal Operations, as well as Assistant U.S. Attorneys Shawn Ren, Henckel, Nicole Robbins, and Daniel Hu in a good faith effort to notify Respondents of Petitioner's intent to obtain a hearing on this TRO request as soon as practicable.

D. There Is Strong Public Interest In Maintaining the Pre-2025 Status Quo.

Finally, the public interest strongly supports the issuance of a TRO. The Supreme Court in *Nken* explained that when the government is the opposing party, the balance of equities and

the public interest merge. 556 U.S. at 435. The public has no interest in perpetuating unlawful detention; rather, the public's interest is served by ensuring that government agencies act within the bounds of statutory and constitutional authority.

Granting Petitioner an individualized bond hearing promotes confidence in the integrity of the immigration system, reinforces respect for the rule of law, and prevents the arbitrary deprivation of liberty. Protecting fundamental due process rights is not just in Petitioner's interest, but in the interest of the public at large.

Each factor of the equitable test weighs heavily in Mr. Suarez's favor. He has shown a substantial likelihood of prevailing on the merits based on the interpretation of Section 236(a) by various federal district courts and the Due Process Clause; he faces irreparable harm each day he remains detained without lawful process—especially as it places him at risk of having his application for permanent residence being deemed "abandoned" in the event that his prolonged detention renders him unable to attend his USCIS interview; the equities tilt overwhelmingly toward protecting his liberty; and the public interest is best served by ensuring that immigration detention is consistent with statutory and constitutional limits.

For these reasons, this Court should issue a Temporary Restraining Order at the earliest possible opportunity, requiring Respondents to provide Mr. Suarez an immediate bond hearing or release him.

CONCLUSION & PRAYER

WHEREFORE, Petitioner respectfully prays that the Court enter an order setting the Application for a TRO for hearing at the earliest practicable time, and upon a hearing, that the Court grant a TRO, as well as any such other relief as the Court deems just and proper.

DATE: November 10, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that on this day, I served a true and correct copy of the above and foregoing *Petitioner's Application for Temporary Restraining Order and Request for Hearing*, as well as any and all attachments thereto, on Counsel for Respondents by serving the same by filing the same using the Court's CM/ECF system and via email to the U.S. Attorney's Office for the Southern District of Texas and to Counsel for the Department of Homeland Security, at the following email addresses:

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DATE: November 10, 2025.